IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6394 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMINUDDIN ABDULBHAI DESAI

Versus

DIST PANCHAYAT EDUCATION COMMITTEE

Appearance:

1. Special Civil Application No. 6394 of 1993

MS URVI SHAH for MR AD OZA for Petitioner No. 1

MR HS MUNSHAW for Respondent No. 1

SERVED BY AFFIX.(N) for Respondent No. 2

MR JANI, A.G.P. for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA

Date of decision: 27/08/2003

ORAL JUDGEMENT

1. Heard learned Counsel Ms.Urvi Shah for Shri Oza for the petitioner, Shri Munshaw for respondent No.1 District Panchayat Education Committee, Ahmedabad District, Shri Jani, learned A.G.P. for respondents No.2 & 3 - District Primary Education Officer and Director of

Primary Education, Gandhinagar.

2. The petitioner was initially appointed as an Assistant Teacher with effect from 17.12.1959 and thereafter appointed as Principal from 1.2.1986. He has completed the age of 58 years in June, 1992 and as per the prevalent policy of the Government he was to retire on 30.6.1992 on reaching his age of super-annuation. Accordingly, he retired from service on 30.6.1992.

3. However, before his retirement the State Government issued G.R. dated 22.6.1992. As per the said G.R. if the birth date of an employee falling between the term then the concerned employee to continue till the end of the academic term i.e. on 31st May and 31st October, as the case may be.

4. It is the case of the petitioner that inspite of the aforesaid G.R. dated 22.6.1992, issued by the State Government, the respondent has deliberately retired him from service with effect from 30.6.1992 and not given the benefit of extension of the term till 31.10.1992. Therefore, legal Notice dated 18.8.1992 (Annexure : B) was issued, through his Lawyer, to the respondents, but no action was taken. However, on 3.10.1992 an order was issued in favour of the petitioner for extension of his service upto 31.10.1992, which was received by the petitioner on 22.10.1992 during Diwali vacation. Because of this, he could not resume duty for about 9 days and he was relieved from service with effect from 31.10.1992.

5. It is averred in Para : 6 of the petition that the petitioner was not paid the salary for the intervening period i.e. from 1.7.1992 to 3.10.1992. Therefore, the petition is filed before this Court and it is prayed that for the intervening period from 1.7.1992 to 31.10.1992 the petitioner be kept salary with interest at the rate of 15 per cent.

6. It is not in dispute that before the date of his retirement the State Government issued G.R. dated 22.6.1992. As per the said G.R. the petitioner should have been continued upto 31.10.1992, but he was made to retire on 30.6.1992. Shri Munshaw for the respondent No.1 submitted that the said G.R. was received by them on 3.7.1992 only after the petitioner was made to retire and as soon as they received the order they reinstated the petitioner in service in October and permitted him to retire from 31.10.1992. Shri Munshaw further states that the intervening period of 1.7.1992 to 3.10.1992 was treated as leave for which the petitioner was entitled

for salary and for the remaining period i.e. from 4.10.1992 till 31.10.1992 and the petitioner would be paid salary for that period and he will be treated as retired from service with effect from 31.10.1992, instead of 30.6.1992. He further makes it clear that if he is not paid salary between 1.7.1992 to 31.10.1992 then the same will be paid to the petitioner as early as possible and not later than 2 months from today. He will also be entitled for all the pensionary benefit as if he retired from service on 31.10.1992, instead of 30.6.1992.

7. In view of the above, nothing more is required to be done in the matter and accordingly this petition is disposed of on the basis of the statement made at the Bar by learned Counsel Shri Munshaw for the respondent No.2. Rule is made absolute to the aforesaid extent with no order as to costs.

Date : August 27, 2003 (B.J.Shethna, J.)

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